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EDITOR'S NOTE

This issue contains two articles describing two different areas of the Appeals process. The first article is written by an attorney who represents school systems at hearings, telling how the process has changed over the years. The second article is written by one of the Appeals mediators describing that role in the process.

In place of two case studies in detail, there is a series of very brief case notes on some very recent cases. The reason for the change being it will give a wider range of issues involved. The complete decisions may be read in any depository.

Ruby—Editor

CONTENTS

REPRESENTING SCHOOL COMMITTEES BEFORE THE BUREAU OF SPECIAL EDUCATION APPEALS

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Back in 1974, school personnel could walk into BSEA hearings with the expectation that a rather brief, informal proceeding was about to take place. Both parties were infrequently represented by legal counsel, and those attorneys that did attend usually took a less than aggresive role. Legal issues were rarely raised; testimony was relatively unhampered by technical objections; and pre-trial devices such as conferences or interrogatories were not utilized. In seven years, times have changed, and so have hearings.

Half-day or one day hearings are a thing of the past. Informality has been replaced by formality. Legal issues, such as those challenging the bureau's jurisdiction to hear certain cases, or claiming that a Human Services agency should have some responsibility to provide certain services, are commonly raised.

These changes are due in large part to two factors: first, the development of a small group of attorneys whose practice is devoted almost exclusively to the representation of parents in appeals hearings; and second, the recognition of the fact that legal issues do in fact have a place in appeals hearings.

The development of experienced special education legal practitioners has resulted in a number of changes in the conduct of BSEA hearings. The witnesses who testify for the parents are much better prepared, and have usually anticipated the arguments that will be raised by the public school. If a private school placement is involved, representatives of that school will often make one or more visits to the public school program before the hearing, and take copious notes listing the deficiencies of the public school's program. Interrogatories seeking specific information are sometimes sent to the public school. Independent evaluators and witnesses from private schools have gained considerable experience in testifying, and have often become adept at the process.

The biggest problem facing public school personnel is, therefore, often a lack of confidence in their own ability to present a forceful, positive appeals case. Public school witnesses are often intimidated by the prospect of having to face a so-called "expert" independent evaluator. The thought of intensive cross-examination rattles them. Too often, public schools end up presenting a defensive, rather than a positive case. They fall into the trap of letting the parents' witnesses control the case, and feel that they must respond to every statement made by the parents' witnesses, no matter how irrelevant the point may be.

The first task facing a school committee attorney is to convince his/her witnesses that they are capable of presenting a forceful, winning case. Witnesses must understand the nature of a hearing, and realize that their case will not be won by merely claiming that the public school's Plan is the "least restrictive alternative."

Most importantly, public school witnesses must appreciate the value of a thorough preparation, no matter how tedious it may seem. Effective preparation begins long before the hearing, and includes, for example, painstaking documentation of contacts with the parents. Once a hearing date has been set, the following preparatory steps should be taken:

1. Be sure that all procedural requirements have been met.
2. If a private placement is involved, learn all you can about the school and the child's program.
3. Decide whether the Plan can be modified in any respect. If so, these alternatives should be explained to the parents, even if the school system does not believe that such modifications are essential.

4. If you are planning to argue that certain services are the responsibility of another Human Services agency, you should contact that agency to determine what services are or should be available.

5. If possible, prepare charts and other visual aids to be introduced as exhibits. For example, a chart showing the child's testing history may be used to show steady progress throughout the years.

6. If a private placement is involved, compare the services offered by the private school and the public school.

7. Analyze progress reports from the private school. Often, close examination reveals that a child was performing at the same or similar level in the public school before he/she entered the private school.

8. Assemble the exhibits that will be introduced by the school system.

Once these steps have been taken, the school system should formulate a series of arguments that will be raised at the hearing. Witnesses should be chosen and their testimony should be organized so that it is not repetitious and boring.

At the hearing, the school system should aggressively question the parents' witnesses. In particular, the independent evaluators should be quizzed in their familiarity with the child and the school system's program. Broad, generalized statements such as "no public school could service this child appropriately" should be attacked.

The school system's case should be positive, cohesive, and orderly; witnesses should discuss the history of the public school's delivery of services to the child; their diagnosis of the child's needs; the details of the proposed Plan; and why different or additional services are not required. Most importantly, witnesses should be specific in their testimony and give concrete examples illustrating the point they are making. It is only logical to conclude that a hearing officer will respond more favorably to a statement such as, "the child has made progress and here are thirteen examples of the areas in which he/she has progressed," rather than to the flat statement, "he/she has progressed."

After the facts of the case have been thoroughly prepared, the school system should decide what legal issues should be raised before the Bureau. "Legal issues" are those questions which involve the interpretation of Chapter 766, P.L. 94-142, and their accompanying regulations.

In essence, when a school system raises a legal issue, it is asking the Bureau to set a legal standard that will govern not only the case at hand, but future cases of similar nature as well. The establishment of a legal standard thus removes some of the uncertainty that faces parties when they litigate a case before the Bureau.

As noted above, legal issues are posed to the Bureau more frequently today. For example, it may be argued, based on cases decided in other jurisdictions, that parents who unilaterally place their children in private schools without prior school committee involvement are not entitled to reimbursement for the costs of those placements. Or, it may be argued that a school system need not provide related services, such as physical therapy, to children whose educational plans do not include independent special education programs besides the related service.

One of the most controversial legal issues raised today involves the responsibility of school committees vis-a-vis Human Services agencies such as the Department of Mental Health or the Department of Social Services. Slowly but surely, case law is being established which recognizes that not all of a child's needs can be designated "educational" in nature. The Bureau has recognized that certain services should be provided by Human Services agencies, such as the Department of Mental Health, rather than by a school committee.

School systems should be alert to the possibility of raising legal issues in certain appeals cases. This requires an in-depth familiarity with laws governing special education and Human Services agencies, as well as with current decisions by the BSEA and the courts.

The complexity of today's appeals hearings should not unduly concern school systems. Public school personnel should remember that they, as professional educators, are usually in the best position to design adequate and appropriate educational programs. Although the introduction of legal procedures and technicalities into the educational decision-making process may seem troublesome at first, school personnel are more than equal to the challenge.

CASE NOTES

Listed below are very brief summaries on several recent BSEA cases. It is meant to give a wider range of issues involved during the 1981 year. All decisions are available to read in detail in the Central Office as well as in the Regional Education Centers.

Case #3755

Profile.

Kristen is a profoundly retarded 12 year old child who is functioning at a 2 - 2½ year old level with minimal self-sufficiency.

Parents' Position.

Based on evaluative findings that Kristen failed to achieve any notable progress over a 2 - 2½ year period in a 502.4(i) day program, they requested a 502.6 residential school with consistent 24 hour structure and behavior management in order to allow Kristen to achieve whatever measure of ADL and self-sufficiency skills her potential will allow.

School's Position.

1. Moved to join DMH as a party on the grounds that she might require a residential placement for other than educational reasons
2. Beverly's support of the current program was based on Kristen's affective and specific skill gains, and her mother's ability to implement behavior modification techniques within the home.

Decision.

1. Denied motion to join DMH
2. Found the 502.4(i) day program capable of meeting Kristen's special educational needs with an appropriate extended day program.

Case #2831

Background.

This case was remanded by the court for a new hearing since the tape recording obtained at the original hearing in fall 1979 was inaudible, and therefore a transcript was unavailable.

Profile.

John was an 11 year old child whose seizure disorder impacted on his receptive and expressive communication, ability to learn, gross and fine motor skills, and perceptual performance.

Parents' Position.

They requested a 502.5 placement at the Little People's School during 1979-80 based on the following grounds:

1. Failure to achieve acceptable academic progress after receiving special education services in Newton from kindergarten through the fourth grade

2. Newton's withdrawal of direct services by the occupational therapist during 1979-80.
3. Considering that the 8 students in the proposed 502.4 class during 1979-80 had been diagnosed as mildly to moderately retarded or developmentally delayed, and that the class presented significant behavioral problems, Mr. and Mrs. S. contended that the proposed placement was inappropriate.

Newton's Position.

Since C. 71B and P.L. 94-142 mandate that the public school program must be judged on the standard of adequacy and appropriateness, rather than better educational services available at a private placement, Newton claimed that the IEP would promote John's academic achievement in the least restrictive prototype. Further, Newton pointed out that mainstreaming opportunities afforded by the IEP would enhance John's educational effectiveness.

Decision.

Ordered Newton to reimburse Mr. and Mrs. S. for tuition and transportation expenses at the Little People's School for 1979-80 school year.

Case #4196

Parents' Position.

Seventeen year old boy needs 502.6 residential placement to adequately address his learning and emotional disabilities.

School's Position.

502.2 public high school placement is appropriate to address students special education needs.

Finding.

502.2 public high school placement is adequate and appropriate to address student's special education needs where the school:

1. Provided 1 hour daily of special needs remediation and academic support
2. Provided ¾ hour weekly of psychological counseling services
3. Placed student in all small-group, structured classrooms in his regular education classes (some of which were modified regular education classes)
4. Where student had developed supportive, secure and beneficial relationships with several of his teachers/administrators/counselors and where
5. The student was progressing academically, emotionally and behaviorally

Case #4442

Appeal by DSS and DYS legal custodians, on behalf of a 14 year old child with special needs who has a recent history of violence and potentially criminal behavior. There is no dispute that the boy requires a 24 hour secure residential facility. The position of the school is when a 502.4(i) locally based program is adequate, paragraph 2 (b) of the Interagency agreement applies and that the LEA has no responsibility to provide or fund the educational component of a 502.6 or 502.7 (b) (iv) Regional Adolescent Program. The agencies argue that the 502.4(i) locally based program is not adequate that the C. 766, 502.7 regulations apply where a child needs to reside in a hospital or regional adolescent program for reasons other than education, and that in any event the LEA must provide the educational component of a 502.7 b (ii) (hospital) or 502.7 b (iv) (RAP) program if the child is placed by the agencies with custody in a hospital or RAP program.

Case #4422

DSS (Parents' Position).

The educational needs of the student cannot be met if he fails to attend school. The alternative high school placement has not been successful in securing attendance. The LEA is therefore responsible for funding the educational component of a residential placement which holds out a greater opportunity for educating the student.

LEA Position.

The alternative high school is programmatically adequate for student. If DSS is unable to furnish an appropriate community based residence which will provide a supportive living environment then the full cost of residential placement should be borne by DSS under paragraph 2b of Interagency Agreement.

Decision.

The programmatic adequacy of the public school placement is established by the record. The LEA is therefore not responsible for cost sharing a residential placement with DSS.

Case #4026

Profile.

A 13 year old boy has been provided a 502.1 prototype special education since 1976. The Framingham Public School decided he is no longer in need of special education.

Parents' Position.

His son continues to have motivation problems affecting his school performance. The school should continue to monitor his performance.

School's Position.

The student has made affective academic progress and therefore needs no special services.

Decision.

The student's motivational problems can be addressed by Framingham's regular education program. Therefore, he is not in need of special education.

Case #4074

This is a case about a sixth grade boy with severe learning disabilities who had received inadequate special services in another school system, and entered the Rehoboth Public Schools as a non-reader with an extremely low self concept.

School's Position.

Jason's needs could be adequately served in a 502.4 resource room program with specialized "Stevenson" reading instruction, group and individual counseling, and a pre-vocational program.

Parents' Position.

Jason's needs could only be adequately served in a 502.6 residential program, where he would receive instruction in an environment that was totally geared to his special needs all day long.

Decision.

The child's needs are severe as to require a 502.5 day placement at Landmark School. There was no showing that the child needed a residential placement for educational reasons. The school showed that two 502.5 placements existed within one hour of Jason's day placement at Landmark.

Case #3587

This is a case about an 18 year old male who suffered brain damage as the result of an automobile accident in the summer of 1978. The school deferred to the diagnosis of the parents' brain injury expert.

School's Position.

Viktor requires a residential placement where he can receive the type of instruction which is geared to activating his emotional response system, made necessary by the loss of much of his cognitive memory. At this time, Viktor is incapable of effectively utilizing psychotherapy in a public school environment.

Decision.

The parents' argument offering the positive reinforcement behavioral program outlined by the parents' principal witness.

Case #4100

This case is about a 10 year old boy whose academic performance has been impeded both by severe learning disabilities and emotional problems. Though much evidence was presented to support the primary nature of each handicap, the issue was framed in terms of which program offered Nicky the opportunity to progress effectively in school.

School's Position.

Nicky needs a strong behavior management program. Nicky's behavorial, emotional needs must be addressed first before remediating his processing and other learning deficits.

Parents' Position.

Nicky would be inappropriately placed in a behavior management class, where the children functioned at different academic levels. Nicky needs a language based program taught at his receptive language level in a small group, along with speech and language therapy.

Decision.

While many experts disagreed over the source of Nicky's learning problems, the evidence of Nicky's language deficits, his past failures in the public schools, distractibility, etc., led the hearing officer to favor the parents' position. Thus, a 502.5 placement at the Little People's School was determined to be the least restrictive, adequate and appropriate placement for Nicky at this time.

Procedural Issue.

An issue arose as to the admissibility of evidence regarding the existence of a collaborative, language-based program. As the program was not an offer for the parents to consider, and was not presented in timely fashion at the hearing, the school alternative was not accepted for determining's Nicky's 1980-81 placement.

Case #4106

Tony K. is a 4 year old boy who has been attending the public pre-school program in Taunton. He has language delays and deficiencies.

Parents' Position.

Is that Tony should be moved to a more appropriate environment with (a) small, structured distraction-free classes to help him with his distractibility and hyperactivity, (b) intensive language and speech instruction and stimulation, and (c) on-going communication between home and school. Parents seek to have Tony placed at READS Collaborative.

School's Position.

Is that Taunton's 502.8 program is adequate and appropriate because (a) it is designed to teach children who require intensive language-based instruction, (b) it provides Tony with services recommended by both Children's Hospital Medical Center and Morton Hospital, and (c) it has been beneficial to Tony as shown by progress reports at school and at the Children's Hospital.

Decision.

Taunton's program is adequate and appropriate, with the addition of once-per-week speech counseling at Morton Hospital, summer school services in Taunton in the languaged-based program, and a mechanism for improved on-going communication between school and home.

Case #4313

The parents raised concerns over the adequacy of the child's current educational placement and about payment for outside therapy for the 1979-1980 and 1980-1981 school year.

The school argued that they could have provided therapy services the same as those provided by the private therapist and that therefore they are not financially responsible.

Decision.

Found that the current educational placement is in line with both school and private recommendations. Moreover, hearing officer concluded that there is no evidence that would justify moving the child out of that classroom for the remaining 2 months of the school year because parents never accepted or rejected the IEP even though they disagreed with its failure to offer funding for private therapy.

As for the 1980-1981 school year, hearing officer found that individual therapy was essential to adequate and appropriate IEP and that child required 12 months uninterrupted therapy. Since school offered no individual therapy, since IEP did not cover a 12 month period and since school offered no transition plan for change of therapists (even though admitting that such a plan would be necessary), hearing officer found school financially responsible for private therapy. However, hearing officer indicated that if school made adequate offer, including 12 month service and transition plan, that in-school therapy could be acceptable future alternative.

Case #2602

The issue is whether the Bureau should take jurisdication over a non-compliance complaint covering the 1975-1976 and 1976-1977 school years. Parent argues that IEPs promised to pay for child's therapy at McLean's Hospital, but that school never paid. School argues that reference to therapy in IEP was for informational purposes only, that no contract for services was ever generated, that school system was never billed by McLean's and that parents never informed school of outstanding balance until spring or summer of 1979.

Decision.

The general rule is that appeal for non-compliance should be brought within time-frame of IEP itself. That under unusual circumstances an exception might be made to this rule but that the facts of this do not argue for an exception. **KEY FACTS:** That parents were billed every single month during child's therapy, plus received letters about non-payment, yet parents never contacted school about payment; that in July 1977 parents drafted a section of IEP which clearly placed payment responsibility on school and school responded by deleting section; that subsequent to termination of child's therapy parents continued to receive monthly statements, plus occasional letters, requesting payment of unpaid balance but parents did not contact school until April or August 1979, over 1½ years from termination of therapy and 2 and 3 years from termination of IEP's.

Case #4004

1. LEA's failure to furnish a service called for in the additional information section of an accepted IEP found to constitute non-compliance with the Regulations of C. 766;
2. Hearing officer did not find sufficient facts of law to warrant an order extending student's eligibility for special education beyond age 22.

Case #4232

The issue was whether Jennifer would substantially regress without summer programming. Her current teachers testified that they believed that she requires summer programming, especially in the area of language development where, given the severe nature of her disabilities and her learning style, with consistent, routine programming she would lose both vocabulary and facility in usage. The school argued that Jennifer would not substantially regress and that indeed she might benifit even more from a summer recreational program than from continued year-round academic placement.

Decision for the parents.

Case #4036

Profile.

Jason is an 8 year old youngster whose severe language disorder was compounded by significant impulsivity, distractibility, and motoric hyperactivity. His learning problems impeded his ability to achieve requisite pre-reading skills.

Parents' Position.

Based on Jason's minimal skill gains, and emerging secondary emotional overlay, at the completion of the first grade (1979-80) they placed him at the Carroll School during 1980-81, and requested financial reimbursement.

School's Position.

The 1980-81 IEP provided for Jason's placement in a collaborative 502.4 language based program located in a public school, and included a 1980 summer educational component.

Decision.

Based on the expertise of the classroom teacher who was able to deliver daily diagnostic prescriptive instruction, the compatibility of the class, and the opportunity for Jason to experience success oriented academic activities, the decision found the IEP adequate and appropriate to meet Jason's special educational needs.

Case #4368 and #4717

In this decision the parents sought to have their learning-disabled child placed in a 502.5 program at the Leland Hall School. The Public Schools contended that they could provide an adequate and appropriate program in a 502.3 placement. With 3 periods per day of small group instruction and 1 period per day of individual tutoring, Joseph will have an educational program the intensity and nature of which meets his needs. With the addition of home tutoring during school year absences and during summer, the negative effects of Joseph's medical problems should be minimized.

Case #4401

Major issue in this case was the need for a summer placement. Witnesses from school testified that in past summers this non-ambulatory, language delayed, severely retarded 11 year old girl had regressed, but had regained lost skills within a month of beginning of school year in September.

This year, however, the child was, for the first time, diagnosed as having a severe hearing loss and amplification was introduced. Various experts, including the school speech and language therapist who has known child for 5 years, stressed the importance of summer programming for this summer.

Decision in favor of parents, stressing uniqueness of this school year, evidence of past regression (whether labelled "substantial" or not).

Case #4263

Prior to a hearing in the fall of 1979, attorneys for parents and school entered into an agreement that the school would pay for Little People's School for 1979-80 and that Sidney would return to public high school for 1980-81. The IEP reflected such movement and covered the period of September 1979 to October 1980.

The parents argued essentially that changes in the school program a) rendered the program inadequate for Sidney and b) that said changes were so significant as to amount to a breach of the agreement. Parents retained Sidney at Little People's School and sought payment by the school pursuant to placement pending appeal.

The school argued among other things that the agreement reached reflected in the IEP established the school as the last agreed upon placement. The hearing officer found for the school. The overwhelming weight of the evidence supported the school position that Sidney would return to the school in exchange for the school paying the previous year at Little People's.

Case #4128

Profile.

A 10 year old mild-moderate retarded student attends a 502.4 prototype special education program at Public School.

Issue.

Whether a 180 day educational program is adequate and appropriate, or whether a 180 day program would cause the student to substantially regress during the summer.

Decision.

There is no evidence that the student would regress if denied a summer program. The student is not in need of a summer educational program.

Case #3617

Profile.

John is a 19 year old learning disabled student whose aggressive behavior and serious drug abuse resulted in his termination from a private non-approved C. 766 school after attending for 2 years.

Mr. M's Position.

Considering John's inability to achieve minimal academic progress in a small, supportive learning environment, and his continuing social and behavorial problems, his father rejected the proposed 502.3 IEP as unsuitable to meet his special needs. Mr. M. sought reimbursement for John's 502.5 placement at the Center for Alternative Education for the period from 3/5/80 through completion of 1980-81 school year.

School's Position.

In offering intensive academic remediation and counseling services for a total of 9 hours weekly, the school argued that these componets combined with other support programs available to the entire high school student body, would meet his needs in the least restrictive prototype.

Decision.

Based on undisputed evidence that:

1. John was now drug-free
2. He achieved at least 3 years of academic skill gain, and was more than functionally literate
3. John was now accountable for his own actions, I ordered financial reimbursement by the school for tuition and transportation costs at CAE for the period in dispute.

Case #3469

Parents' Position.

Is that a 502.5 private day school placement is necessary to adequately address child's special education needs, to wit; expressive and receptive language disorders with accompanying speech musculature/articulation problems.

School's Position.

Is that a 502.4 collaborative placement is adequate and appropriate to meet child's special education needs in the least restrictive prototype.

Finding.

That a 502.4 collaborative placement in a language disorders program is adequate and appropriate to meet child's special education needs where such language disorders program:

1. Met the criteria for a total language program as defined by both Parent and School expert witnesses necessary to address child's needs and
2. Parents had been offered a similar program in 1979 and the identical program in 1980 but had refused to place the child in said programs.

Case #4187

Profile.

Billy is a 14 year old severely learning disabled youngster whose basic skill levels were at the low fourth grade level at the completion of the 7th grade (1979-80). His academic lag remained at the low fourth grade level almost at the end of the 8th grade (1980-81). Despite continuing academic defeats and frustrations, he was emotionally healthy, and remained highly motivated to achieve.

Parents' Position.

Their rejection of the 1980-81 IEP, and their request for a 502.5 day placement during 1981-82, were based essentially on their argument that Billy had achieved insufficient skill gains after receiving special education services in Chelmsford for the past five years, and that Chelmsford lacked the capability to remediate his severe learning problems and promote his effective educational progress during 1981-82.

School's Position.

While acknowledging that Billy's academic gains has been extremely slow, the public school contended that they could provide adequate remediation and supportive services to address his special educational needs in the least restrictive prototype.

Decision.

Found the 1980-81 IEP inadequate and inappropriate based on minimal skill gains, and order the school to fund tuition and transportation costs for a 502.5 placement at the Carroll School during 1981-1982.

Case #4324

Profile.

Jeremy is an 8 year old male diagnosed as developmentally dyslexic with above average scores on intelligence tests who reads approximately 1 year below grade level.

Parents' Position.

Based upon evidence of limited academic progress after 2 years in a 502.4 placement, parents argued for a 502.6 residential placement with intensive 1:1 remediation, concentrating on reading and language arts.

School's Position.

Based upon evidence of recent academic progress, school argued for a new 502.4 placement in a classroom with L.D. students with above average intelligence test scores with concentration on reading and language arts.

Decision.

Ordered placement in school's 502.4 placement with modifications to meet student needs identified in the record, e.g., increased time in 1:1 reading and language arts tutoring; training in auditory analysis, etc.

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Massachusetts Advocacy Center
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THE MEDIATION OF A THIRD

by: Patrick Davis, Mediator
Regional Representative
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In 1625, Francis Bacon wrote: "It is generally better to deal by speech, than by letter, and by the Mediation of a Third, than by a man's self." Mediation is not new. It is, or ought to be, an indispensable piece of equipment for anyone who is not a hermit. It is woven into the fabric of the most common human encounter wherever minimal social graces are present. It happens daily, even in the best of families. "If you give Elizabeth one of your cars, she may not want to eat your homework," is a mediation technique, the use of floating alternatives. This is a more educational and effective presentation than the Arbitrator (or Hearing Officer) approach even if impatience sometimes causes one to remove Elizabeth bodily from the scene.

Over the past decade, mediation in the formal, structured sense, seems to have been rediscovered. One would like to think that this is due solely to its many advantages as a problem-solving technique. It is due to this fact but also to a well-publicized backed-up legal system in a more and more litigious society. Many courts now offer mediation as an alternative to an appearance before the Judge. It is used in labor-management disputes, consumer complaints and domestic or community disputes. Some neighbors can be helped to live relatively happy ever after in spite of their children's proclivity for breaking windows or deafening the neighborhood with their new stereo systems. More than one neighbor has chosen to move (in the distant past, of course, when a mortgage was possible) rather than live with the fall-out of an adversarial legal process with all the acrimony and expense that can entail.

Within the Division of Special Education, the Bureau of Special Education Appeals has utilized mediation since the beginning of Chapter 766. Without the benefit of tested models within the field of Education, the Bureau developed handbooks, trained personnel and implemented this mechanism with some success. Just as the Federal Law 94-142 was to a major extent modeled after Chapter 766, the small print plaudit for mediation in that Federal legislation was due to its successful implementation in Massachusetts. Over the past five years, I have experienced the evolution of mediation from a barely tolerated intrusion into school systems to a genuine and positive acceptance.

This is not to say that the arrival of the mediator is cause for celebration. In fact, the mediator does well not to get carried away with an exuberant "it's really nice to see you," greeting from the Special Education Administrator. Disputes will always have a nuisance dimension. But given the reality of the law of due process rights, and of the nature of special education, mediation has proven itself to be a less expensive, less adversarial and often successful mechanism in parent-school disputes over programs of special needs students.

Potentially, the parent-school relationship can extend over a substantial number of years. If it is a hostile one, this can be a long battle. With mediation, parties to a dispute, however far apart in positions, can be convened, can clarify issues, can be helped to acquire a mutual understanding of one another's position and can ultimately have better informed decisions whether these be decisions to agree or to apt for further legal process. Put another way, the approximately fifty percent agreement rate experienced in mediation is not the only barometer of its effectiveness.

In Special Education, one is dealing with legal language that the law says is "intentionally flexible," that some have called vague and that one parent in my experience has labelled "a mandate for mediocrity."

Special Education programs must "give assurances of effective progress," be "tailored to the needs" of the student and "actually benefit the student." This is not the language of an insurance policy, nor could it be. It is not possible to bottle an educational handicap in a test-tube and follow it with a formula. And once parties can get beyond the "strep throat penicillin syndrome" where they are locked into dogmatic and infallible positions about solutions to special needs problems, they can be moved to alternative positions, to compromise and often to agreement.

Mediation addresses conflict. One of the most common of misconceptions is that conflict is a negative, the result of some human failing. The conflict happens, for example, because the parents expected too much or because the system is doing too little. Conflict, however, is a necessary and indispensable component of any quality product. Mediation attempts to ensure that conflict remains on a constructive track. Whatever quality can be attributed to special education in the State is the result, in part, of the constructive and persistent conflict between all parties to the special education effort.

Conflict, of course, can be destructive. I can attest to once having to hastily terminate a mediation session, briefly into the process, because of the comparable difference in stature between myself and the combatants. Once a participant narrowly avoided a scalding with coffee when a book was thrown the length of the table. Emotion, and sometimes frustration, is an ingredient in the parent-school encounter. The business, after all, does revolve around a unique and special individual for whom there are hopes, disappointments, failures and successes. Some ventilation of these emotions is perfectly legitimate and even healthy. The mediator can help delineate the delicate line between what is constructive and what is not.

Mistrust also can be an ingredient in the parent-school relationship. Each case has a history. The mediator is therefore required to be a bridge-builder of sorts: Communication breaks down. What the school system is proposing, or what the parent is requesting, is not even being heard. As a third party, impartial though not neutral, the mediator can act as a sounding-board, and a translator so that communication is enhanced and so that parties will at least know what is actually being proposed and rejected.

More than once, it has been said of the mediator's task that it is a tough way to pay one's oil bills! Relatively, it is the easier of tasks of those sitting around the mediation table. The mediator leaves town the same day that he arrives. Others, especially the parents, must live for long periods with all the attendant demands of the special needs child. Recently, while leafing through a sociology magazine, I happened on an article on compassion. This, unfortunately, is a topic rare to any secular medium. It does not mean sympathy nor does it mean condescension in any form. It means a suffering with another, a feeling what the other is feeling in some degree. The author said that one need not be canonizable in order to appreciate and to be in some way ennobled by an experience of a Mother Teresa of Calcutta. The most irreligious, he said, stand in awe and respect of such an individual. It is the most human and humanizing of traits and belongs very properly to the subject of mediation and to the discipline of special education. When compassion is present, and most of the time it is, it is palpable, recognizable and covers a multitude of other failings. When it is absent, and sometimes it is, it is all of the above, it cannot be hidden, and everyone is the poorer.

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STATISTICAL OVERVIEW

September 1981 through August 1982

	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	TOT
New Cases	133	85	81	54	63	50	76	68	100	138	138	126	11
Mediated/ Agreed	54	50	56	39	23	29	40	20	37	38	34	34	4
Withdrawn/ Post- poned/ Other	26	54	32	28	18	28	31	2	15	9	17	23	2
Hearings Held	30	31	49	29	37	30	34	23	25	31	21	24	36

September 1982 through May 1983

	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	TOT
New Cases	139	69	60	75	76	58	84	65	110	73
Mediated/ Agreed	75	58	46	24	33	27	47	30	37	37
Withdrawn/ Post- poned/ Other	33	76	42	14	23	17	26	26	24	28
Hearings Held	37	39	39	34	27	29	35	28	37	30

Total number of cases and outcomes since the implementation of Chapter 766 for the period 1974 through May 19

Total Number of Appeals	7016
Cases Mediated/Agreed	3127
Withdrawn/Postponed/Other	1360
Hearings Held:	2106
Cases Pending Independent Evluations/Mediations/Hearing	423
TOTAL	7016
Decisions Rendered - 5/77-5/83	924